IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE J.CHELAMESWAR
And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14973 of 2004

Between:
K. Kishan, S/o Gopaiah,
O/o D.M. & H.O. Nalgonda, Nalgonda District.

..... PETITIONER

AND

1 The District Medical & Health Officer, Nalgonda, Nalgonda District.
2 The Director of Health, Government of Andhra Pradesh,
Koti, Hyderabad - 500 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of Indla praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents herein in issuing the impugned Proceedings Rc No. 16522/H5.A/04, dt. 9-7-2004 by the 2nd respondent and the common orders of the APAT in OA.Nos. 38497 4035/04 dt. 28-7-2004 as illegal , arbitrary and contrary to the Law laid down by this Hon'ble Court and Supreme Court and consequentially this Hon'ble Court may be pleased to set aside the impugned Proc. dt. 9-7-2004

Counsel for the Petitioner: MR.M.R.TAGORE

Counsel for the Respondent No.: GP FOR MEDICAL HEALTH & FAMI.WELFARE

The Court, at the stage of admission, made the following:

:ORAL ORDER:

(Per: The Hon'ble Mr. Justice J. Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the affidavit accompanying, this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents herein in issuing the impugned Proceedings Rc.No. 16522/H5.A/04 dated 09-07-2004 by the 2nd respondent and the common orders of the APAT. O.A.Nos. 3849 & 4035 of 2004 dated 28-07-2004 as illegal, arbitrary and contrary to the law laid down by this Hon'ble Court and the Supreme Court and consequentially this Hon'ble Court may be pleased to set aside the impugned Proc. D t. 09-07-2004 and may pass such other order or orders in the interest of justice."

The petitioner was working as the Administrative Officer in the office of the District Medical and Health Officer, Nalgonda (for short 'D.M. & H.O.). It appears that the D.M. & H.O. sent a report to the Director of Medical Health, Andhra Pradesh, the substance of which is that the petitioner is not co-operating in the day-to-day administration of Medical and Health Department causing interruption in implementation of orders of the D.M. & H.O. leading to severe disturbance of health programmes in the district and also deliberately suppressing the

communications received by the D.M. & H.O. Therefore, the D.M. & H.O., surrendered the services of the petitioner to the Director of Health. Thereafter, the petitioner, it appears, was posted to the Area Hospital, Jagithyala, Karimnagar district by the proceedings dated 09-07-2004 of the Director of Health, Hyderabad.

Characterizing the order dated 09-07-2004 as an order of transfer, the petitioner approached the A.P. Administrative Tribunal, Hyderabad by way of O.A.No. 4035 of 2004 challenging the above mentioned transfer order on the ground that the order of transfer is by way of punishment. The petitioner also sought suspension of the said order of transfer during the pendency of the above mentioned O.A. By order dated 28-07-2004, the Tribunal declined to suspend the transfer order and hence the present writ petition.

Learned counsel for the petitioner very vehemently argued that the order dated 09-07-2004 is an order of transfer by way of punishment and placed strong reliance on an earlier judgments of Division Bench of this Court in *A. VENUGOPAL RAO vs EXECUTIVE ENGINEER, PANCHAYAT RAJ, MACHILIPATNAM* ([1]). At paragraph No.10 of the said judgment, it is held as follows:

> "…For the purpose of finding out as to whether an order of transfer has been passed by way of or *in lieu* of punishment or otherwise depends on facts and circumstances of each case. It is well settled principle of law that an order of transfer on administrative ground is permissible but an order of transfer by way of or *in lieu* of punishment is not."

As can be seen from the above extract, that it all depends on the facts and circumstances of the given case, whether the order of transfer was passed as a measure of punishment or *in lieu* of punishment or only as an administrative measure.

From the facts of the present case, as narrated earlier, the services of the petitioner were surrendered by the D.M. & H.O., Nalgonda to the Director of Health, Andhra Pradesh. His subsequent

posting to the Area Hospital, Jagithyala, Karimnagar district, in our considered view, cannot be called as a transfer from Nalgonda to Jagithyala either by way of punishment or otherwise. In the facts and circumstances of the case, as evidenced by the impugned order itself, we are satisfied that the impugned decision was taken on administrative grounds and in public interest.

We do not see any reason to interfere with the discretionary order of the A.P. Administrative Tribunal, impugned herein, declining the grant of interim orders. We are of the view that the filing of writ petition is sheer abuse of process of the court and is therefore dismissed at the stage of admission with exemplary costs quantified at Rs. 2,500-00 (Rupees two thousand five hundred only).

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J. CHELAMESWAR, J

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GODA RAGHURAM, J

Dt. 24-08-2004
Pvks/*

To

1 The District Medical & Health Officer, Nalgonda, Nalgonda District.

2 The Director of Health, Government of Andhra Pradesh,
Koti, Hyderabad - 500 001.

3.2CCs to the Government Pleader for Medical Health & Family Welfare, A.P. High Court Buildings, Hyderabad (OPUC).

4.2CD copies

*Form-NIC-OGS/WP{**AVLR**}*

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[1] 2002 Suppl. (1) ALD 147 (DB)